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ABSTRACT

As a result of declining enrollment and newly instituted limitations on property taxes resulting from passage of Proposition 2 1/2, school districts in Massachusetts have been forced to reduce the size of their teaching staffs. The Massachusetts Advisory Committee to the U.S. Commission on Civil Rights sought to determine what steps were being taken to maintain racially diverse public school faculties in the face of teacher layoffs. The 10 papers making up this report were presented at a consultation session hosted by the Advisory Committee for the purpose of encouraging communication among organizations and individuals found to be taking action to lessen the impact of teacher reductions. The introduction to the report explains the background situation and notes common themes appearing in several of the papers. The papers themselves discuss legal, financial, and political issues affecting affirmative action policies and layoffs, the impact of layoffs on both school desegregation and minority representation on faculties, the roles of government agencies in preventing discrimination, alternatives to the layoff of minority teachers, and the provision of assistance to laid off staff members seeking new jobs. Conditions and responses to those conditions in the Massachusetts cities of Boston, Cambridge, Worcester, and Framingham are cited. (Author/PGD)

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Teacher Layoffs, Seniority and Affirmative Action

May 198

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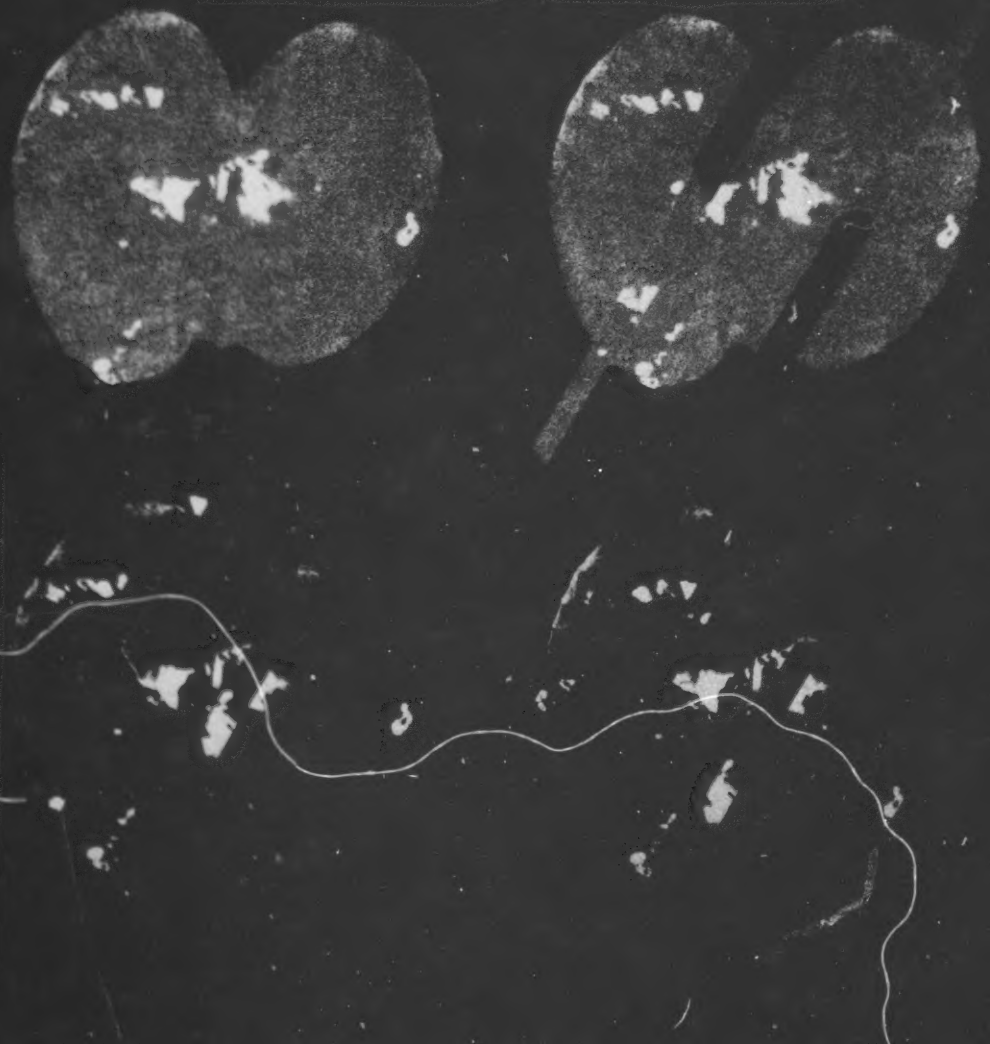

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Teacher Layoffs, Seniority and Affirmative Action

—A report based on a consultation sponsored by the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, August 20, 1981.

Attribution:

Where appropriate material presented in this report should be attributed to individual panelists who participated in the consultation. All other material represents the interpretations and conclusions of the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights and, as such, is not attributable to the Commission. This report has been prepared by the State Advisory Committee and will be considered by the Commission in formulating its recommendations to the President and Congress.

Letter of Transmittal

Massachusetts Advisory Committee to
the U.S. Commission on Civil Rights
May 1982

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Dear Commissioners:

The Massachusetts Advisory Committee submits this report containing the proceedings of its Consultation on the Impact on Affirmative Action of Layoffs in Public Education as part of its responsibility to inform the Commission about important civil rights issues in Massachusetts.

For several years, school enrollments in Massachusetts have declined, and in 1981, as a result of the implementation of Proposition 2½ (a new tax law which placed a cap on local property and excise taxes), municipal tax revenues also decreased in most cities and towns. This combination of decreased enrollments and reduced revenue caused many municipalities to lay off teachers in 1981. There is every expectation that such reductions in staff will continue in the future.

The Advisory Committee, concerned that the impact of these layoffs would fall most heavily upon recently hired minority teachers, held a consultation to explore the issue of the retention of minority faculty members in time of layoffs. At the consultation, educators, attorneys, school committee members and government agency representatives presented their views for dealing with this increasingly serious problem.

In its recent publication, *Affirmative Action in the 1980s, Dismantling the Process of Discrimination*, the Commission observed that seniority rules are a form of organizational discrimination "when applied to jobs historically held by white males, that make more recently hired minorities and females more subject to layoff—the 'last hired, first fired' employee—and less eligible for advancement."

The papers contained in this report present no simple solutions, but among the points raised are: that students have a right to a non-segregated faculty; that minority teacher employment extends desegregation; that consistency requires affirmative action in layoffs as well as in hiring; and that teacher organizations must represent *all* teachers.

The Advisory Committee is pleased to transmit this report of the consultation which took place on August 20, 1981 in Boston, and hopes that you find it useful as you continue to address this critical problem.

Respectfully,

BRADFORD E. BROWN, Ph.D.
Chairperson
Massachusetts State Advisory Committee

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The consultation and report were the principal staff assignment of Mary Lee Walsh, and were accomplished with assistance from Larry Riedman, and support from Marilyn Kittle and Sylvia Cooper. The project was undertaken under the overall supervision of Jacob Schlitt, Director, New England Regional Office.

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1. Introduction

The last few years have seen a reversal of the rapid growth in public education that had prevailed in Massachusetts and nationally for more than 25 years. From the end of World War II through the early 1970s, school enrollments increased, hundreds of new schools were built, new educational programs were implemented and thousands of teachers were hired in the Commonwealth.

During this period, legislation prohibiting employment discrimination was enacted, and affirmative action efforts were undertaken to eliminate the effects of past discrimination. By 1980, blacks and other minorities were beginning to be employed in significant numbers by many of Massachusetts' larger school systems. However, by the middle 1970s, employment opportunities were diminishing as a result of declining school enrollments and increasing costs. The threat of teacher layoffs emerged.

Decreasing enrollment apparently will continue. One study estimates that the number of public high school graduates will decline from the 1977 peak of 79,400 to 44,610 in 1994.[1] According to Massachusetts Department of Education statistics, enrollments in public schools statewide decreased 17 percent between 1974 and 1981.[2] In the Boston Public Schools, student enrollments have decreased from over 96,000 for the 1970–71 school year to under 63,000 for 1980.[3] Table 1 sets forth student enrollments in most of the Commonwealth's larger cities and towns for the three-year period from 1978–1980. With two exceptions, enrollments declined every year in every municipality.

Not only has student enrollment decreased over the last few years, but also the number of schools. Between 1974 and 1981, there was a net loss of 326 public schools in the State (2,502 in 1973–74 to 2,176 in 1980–81).[4] In 1980, 92 schools closed while only 4 new ones opened. The number of schools in Boston decreased from 178 in 1970–71 to 126 in 1981–82.[5]

With decreases in enrollment and with school closings, it becomes necessary at some point for school systems to reduce their staffs. In Massachusetts, layoffs were accelerated because of the enactment of Proposition 2½ in November 1980, requiring municipalities to reduce real property and excise taxes 15 percent annually until they reach 2½ percent of the fair market value of the property being taxed. The resulting decreases in tax revenues have caused municipalities to cut back on services and to reduce their work forces, including teachers.

[1] Western Interstate Commission for Higher Education, National Institute of Independent Colleges and Universities and Teachers Insurance and Annuity Association, *High School Graduates: Projection for the Fifty States* (1980), p. 26l.

[2] Commonwealth of Massachusetts, Department of Education, *Declining Enrollments in the Massachusetts Public Schools: What It Means and What to Do* (1978), p. 4; and Commonwealth of Massachusetts, Department of Education, Bureau of Data Collection, *Individual School Report, October 1, 1980,* Table 3, p. 9.

[3] Boston Municipal Research Bureau, *The State of the Boston Public Schools, A Pessimistic Diagnosis by the Numbers,* Part 2, "Pupil Enrollments," no. 81-11, Sept. 17, 1981.

[4] Commonwealth of Massachusetts, Department of Education, Bureau of Data Collection, tables submitted in response to request from New England Regional Office, U.S. Commission on Civil Rights.

[5] Edward Winter, Secretary to the Boston School Committee, telephone interview, November 5, 1981.

Table 1
Public School Student Enrollments in Massachusetts

	1978	1979	1980
Amherst	1,663	1,576	1,512
Barnstable	5,529	5,433	5,396
Boston	72,107	69,973	67,981
Brockton	19,967	19,128	18,668
Brookline	6,334	6,246	6,107
Cambridge	9,214	9,220	8,767
Chelsea	3,770	3,591	3,641
Chicopee	9,142	8,739	8,073
Fall River	14,140	13,825	13,459
Falmouth	5,071	4,865	4,749
Fitchburg	5,433	5,205	5,020
Framingham	12,148	11,282	10,557
Haverhill	8,512	7,998	7,651
Holyoke	8,045	7,809	7,648
Lawrence	8,288	8,201	8,058
Lowell	13,535	12,828	12,708
Lynn	14,434	13,914	13,447
Medford	9,275	8,587	7,895
New Bedford	15,509	15,160	14,924
Newton	13,819	13,050	12,426
Pittsfield	10,629	10,042	9,498
Quincy	13,552	12,904	12,197
Somerville	10,513	9,803	9,088
Springfield	26,655	24,874	24,613
Waltham	9,096	8,474	7,954
Worcester	25,139	23,854	23,109

Source: Commonwealth of Massachusetts, Department of Education, Bureau of Data Collection, *Individual School Report, October 1, 1978; October 1, 1979; October 1, 1980,* Table 3.

Although there are no statewide figures available,[4] it is expected that teacher layoffs for the 1981-82 school year and beyond will have an adverse effect upon minorities. Traditionally, layoff decisions are made on the basis of seniority or length of service. Because most black, Hispanic and other minority teachers were "the last hired," it has been feared that they will be "the first fired."

The Massachusetts Commission Against Discrimination estimated that three-quarters of all municipally employed minorities will be laid off if municipalities are forced to reduce their work forces by one-fourth and use seniority as the sole criterion. Gains in minority employment made in the last few years could be wiped out by these layoffs.

The Massachusetts Advisory Committee to the USCCR, which has closely followed the progress of equal education in the Commonwealth, was concerned about the impact of a reduced minority faculty on the education of all children, minority and non-minority. It fears that failure to retain a racially and ethnically diverse faculty may have a detrimental effect upon the education of the students.

The Advisory Committee sought to find out what steps were being taken to maintain racially diverse public school faculties in the face of teacher layoffs. It learned that some organizations and individuals were attempting to minimize layoffs by encouraging job-sharing, a shorter work week and early retirement plans. Others stressed the importance of considering factors other than seniority in layoffs. Still others were focusing their efforts on retraining teachers for employment in other fields.

To provide a forum for these organizations and individuals to share their ideas and experiences, the Advisory Committee held a consultation on August 20, 1981, at the John F. Kennedy Federal Building in Boston. The participants came from the fields of law, education, and government, and the papers they submitted for that consultation are reprinted in this report.

While no attempt to summarize the papers will be made in this brief introduction, some of the themes that recurred in the presentations will be mentioned. One theme is the importance of planning ahead for affirmative action before reductions-in-force occur. Explicit affirmative action language should be in place in layoff and recall provisions of collective bargaining agreements. Likewise, the speakers stressed the need for the implementation of comprehensive affirmative action programs. If tools such as these are part of the administrative structure prior to the threat of layoffs, they can be utilized to ensure the continuation of minority representation on faculties. If they do not exist, the task is much more difficult.

However, simply having strong affirmative action language does not guarantee that it will be enforced. Participants stressed the need for minority teachers to organize in order to ensure that teacher associations, school committees and school administrators take steps to retain minority faculty representation, and to comply with requirements.

The legal status of affirmative action in times of layoffs is not altogether clear, and some speakers called for government civil rights agencies to enforce existing anti-discrimination laws. Others advanced ideas to save jobs, such as job-sharing, across-the-board pay reductions, and early retirements.

Consultation participants agreed that retention of minority teachers is an educational as well as an employment issue. They asserted that the presence of minority teachers provides essential role models for successful development of minority students and also is valuable to majority students.

It is clear that the conflicts among strict seniority systems, quality education and affirmative action considerations are likely to remain a thorny issue for some time to come. It is hoped that the ideas and information presented here will be useful to those who must deal with the problem of maintaining minority faculty representation in the face of reductions-in-force in public education.

[4] The Massachusetts Department of Education is compiling statistics on numbers of teachers who left public education in 1981 and their reasons for leaving, e.g., laid off, retired, resigned, etc. (However, no information on the race or ethnicity of the affected teachers has been collected; nor are the data available at this printing.)

2. Affirmative Action and Reduction-in-Force

Meyer Weinberg

Professor Weinberg has written extensively on school desegregation and equal educational opportunity. He is the director of the Horace Mann Bond Center for Equal Education at the University of Massachusetts, Amherst, which publishes the journal Equal Education in Massachusetts: A Chronicle. His paper discusses the relationship between affirmative action in the employment of teachers and school desegregation.

In the 1954 and 1955 decisions of the U.S. Supreme Court in the case of *Brown v. Board of Education,* 347 U.S. 483 (1954) and 349 U.S. 294 (1955), teachers are not mentioned. Neither plaintiffs nor defendants based their cases on the role of teachers, although it was common knowledge that teachers had been as segregated as students in the old order presumably struck down by the Supreme Court. Not until 1965 did the High Court first concede in *Rogers v. Paul,* 382 U.S. 198 (1965), that the existence of a segregated faculty might be considered in determining whether *Brown* was being breached. The tardiness of courts on this matter flew in the face of mass firings of black principals and, to a lesser extent, black teachers, during desegregation in the 1960s. Only at decade's end was there evolved a working principle embodied in the *Singleton* decision, *Singleton v. Jackson Municipal Separate School District,* 419 F.2d 1211 (5th Cir. 1970), which enjoined desegregating districts to maintain the ratio of black to white teachers. *Singleton's* aim was to stop the substitution of white for black teachers. This rule has been adopted widely by courts in the South.

Thus, during the first decade-and-a-half of *Brown,* teachers moved from being ignored to being protected in part. Many of the gains black teachers recorded were due to self-organization. For example, fewer black teachers in large cities were discharged than was the case with their rural peers. Urban teachers were better organized. All the costs of judicial inattention were paid by black teachers as discharges were seldom remedied by law during the early years. The National Education Association (NEA) publicized the plight of the fired teachers. NEA also spent considerable amounts of money in fighting cases in court, largely with success.

By the opening of the 1970s, the courts had come to view teachers as integral parts of desegregation. Indeed, the Justice Department during the Nixon Administration, eager to avoid student desegregation, fastened on teacher desegregation as a substitute. In 1969, the Department began a long chain of letters to the Chicago School Board, demanding the faculty be desegregated. The U.S. Department of Health, Education, and Welfare (HEW), in assessing school district applications for desegregation funds, frequently rejected the requests on the ground of teacher segregation. Seldom, however, did HEW stipulate segregated enrollments as an invalidating condition. Under the Carter Administration, little changed.

Another feature of the emerging situation was the Civil Rights Act of 1964. Since it addressed, in part, employment as an area protected from racial dis-

crimination, black teachers expected protection. On the basis of this law as well as executive orders relating to fair employment, affirmative action became a familiar phrase. Unfortunately, adoption of goal statements far outdistanced accomplishments.

By the mid-1970s, then, the courts had begun to build a solid foundation of protection for blacks. It should be recalled that white workers were not subject to racial discrimination and thus did not need such protection. The Federal Government's record was spotty and inconsistent, especially on the administrative side.

In the midst of this mixed picture came the financial crisis of the public schools. While some veiwed it as an ineluctable expression of an absolute shortage of funds, others attended, more realistically perhaps, to the political context of the budget-cutting. At times the reductions were highly uneven; more often they were directed at human and social services of which schooling was only one. In any event, a fateful consequence of the crisis was to create circumstances in which black and white teachers became competitors for a shrinking number of jobs. Thus, instead of uniting to resist and help reverse a deadly serious attack on the public schools, teachers were detoured into the present impasse.

What are the central features of that impasse? And how may it be resolved? As the above sketch suggests, minority teacher employment is both a matter of equity and a way of extending desegregation. At the same time, the principle of affirmative action requires fair employment, not exclusive employment by any single group. Where one group of teachers has had the almost exclusive privilege of employment, affirmative action aims at ending that privilege. It would seem there is no way to accomplish this other than by positive measures to assure the presence of minority teachers. The record of local school districts and of State enforcement agencies in the area of fair employment is sorely inadequate.

To permit the wholesale dismissal of minority teachers in the name of seniority is not only inequitable and a violation of affirmative action, it is also a means of resegregating a school system. This would seem to be the case regardless of whether or not the school district is under a legal order to desegregate. Indeed, resegregation of teachers might well be regarded in a future court action as an indicator of *de jure* segregation in districts not presently under order.

Quite possibly the most important statement on the issues thus far is U.S. District Judge Noel P. Fox's ruling in *Oliver v. Kalamazoo Board of Education,* 498 F. Supp. 732 (W.D. Michigan 1980). The school board asked the court to suspend the operation of the seniority-layoff clause in the union contract so that blacks would not be laid off in disproportionately large numbers. The union contended the plan was illegal. Minority teachers argued that the layoffs by seniority would reduce the proportion of black teachers far below the 20 percent level accepted by the school board in 1973. (That year, Judge Fox had found the school district guilty of deliberate segregation and ordered desegregation.) In fact, by 1979 the school district employed only 12.6 percent minority teachers. Layoffs would have cut the figure to 9.8 percent.

The teachers union contended, among other things, that recalling black teachers of lesser seniority discriminated against white teachers of greater seniority. Quoting from the U.S. Supreme Court's opinon in *Franks v. Bowman Transportation Co.,* 424 U.S. 777 (1976), Judge Fox reproduced its words that there must be a "sharing of the burden of the past discrimination." So long as the burden of sharing was reasonable, it was permissible.

Yet, Judge Fox refused to grant the request of plaintiffs that all laid off black teachers, probationary and tenured, be recalled. He specifically objected to replacing senior white teachers by black probationers. The former he characterized as "teachers who have given years of dedicated effort to the Kalamazoo Public Schools, and testimony indicated that each is sensitive to the needs of minority students and is committed to working with the school system to achieve the objectives of desegregation." It was in the educational interests of students to be taught by a tenured rather than a probationary teacher.

His order therefore called for the recall of all black tenured teachers, to be followed by recall of all other teachers on the basis of seniority "so long as at least 20 percent of all recalls in any one year are filled by black employees." In addition, whenever the level of recalled blacks falls below 20 percent, blacks will be recalled out of seniority order until the level of 20 percent black is reached. Finally, in the event that no black tenured teachers are available, no more than 80 percent white teachers can be recalled, and enough blacks are to be newly-hired to reach the 20 percent level.

Judge Fox noted that under this plan only few white experienced teachers would suffer; a small number of black tenured teachers would replace them at the outset. In any event, since seniority still regulated the return of teachers during a large part of the planned procedure, the displaced senior white teachers would "be returned to their jobs very quickly."

The noteworthy features of this case are numerous. For one thing, the judge's ruling is anchored in the constitutional rights of students to have a non-segregated faculty and is related directly to a desegregation order. For another, the legal status of the school board's affirmative action goals is given major weight. In addition, the judge's flexibility is exemplary, abjuring any tendency to ride roughshod over the rights of experienced white teachers.

Judge Fox handed down his ruling on September 30, 1980. What happened during the 1980–81 school year?

As soon as the Fox order began to operate, many teachers filed grievances based on the court-modified board contract. So numerous did these become, that they threatened the operation of the plan. Judge Fox directed the school board and the union to select an arbitrator from a panel supplied by the American Arbitration Association. The arbitrator, Judge Fox stipulated, could resolve the grievances but without affecting any part of the desegregation order.

On August 19, 1981, the arbitrator, Detroit lawyer George Roumell, made the arbitration award. Following the judge's instructions, Roumell dealt with the grievances as a class action rather than as individual complaints and he permitted administrative employees to be "bumped down" to teaching positions, against the protests of classroom teachers who regarded the procedure as special privileges for administrators.

3. Layoffs in the Public School System: Proposition 2½

Margaret Dale

Ms. Dale is an attorney with the Massachusetts Commission Against Discrimination (MCAD) and has had primary responsibility for the A-95 civil rights review program. She was asked to address the role of MCAD in coping with discrimination questions that may arise because of public sector layoffs caused by Proposition 2½.

The legal and policy questions surrounding the issues of retention and layoff in public employment in Massachusetts present difficult challenges to those of us concerned with civil rights and affirmative action. As we all know too well by now, we are presently faced with a situation where substantial numbers of public employees across the Commonwealth have lost or will lose their jobs this year or next year. As the Massachusetts Commission Against Discrimination (MCAD) first announced in a press conference at the beginning of 1981, it is expected that a disproportionate number of the laid off workers will be minorities and non-traditionally employed women, two groups who have only in recent years begun to be employed in public sector positions in any significant way.

Preliminary published reports and discussions with municipal officials estimated that up to 25 percent of the municipal workforce might be laid off this year, with significant cuts in police and fire, public works and other municipal departments as well as school departments. Other considerations, however, including increased local aid and the independent factor of declining school enrollments, have resulted in significant layoffs in most communities being limited to school department employees.

Most school departments will lay off employees on the basis of straight seniority. Straight seniority works on a "last hired, first fired" basis; employees who have been working in a department the shortest time will be the first to be let go. Many of the layoff decisions for public school employees are being based on seniority provisions in collective bargaining agreements. Additionally, other school departments may be applying seniority standards for positions not covered by collective bargaining agreements in order to reduce the political pressures inherent in laying off large numbers of public workers.

Most of the MCAD's data on the impact of Proposition 2½ deal with non-school municipal employment. Our civil rights review program works with 170 cities and towns which have signed program agreements with the Commission and are currently implementing affirmative action activities. Under this program, we have seen minority, non-school, municipal employment rise from slightly over 2,000 in 1977 to almost 4,500 in 1980. Unfortunately, resources prevented us from developing a similar program for school department employment and we do not have the extensive data, nor is there as much affirmative action activity for school departments as for the balance of municipal employment. The MCAD had hoped, in fact, to expand the civil rights review program into the area of affirmative action in school employment. Proposition 2½, however, which has impacted State as well as local employment, has meant recent layoffs at the MCAD and has made any expansion of the program unfeasible.

However, despite lack of as accurate data as we would like, it is apparent that the final numbers will

show that minorities have in recent years made gains in school department employment, both as teachers and as administrators, and that these gains will to a large measure be wiped out as the result of layoffs. The public policy implications of this loss of minority teachers and administrators, especially in light of increasing minority school enrollment, are enormous.

A major task of this consultation is identifying realistic and practical alternatives to laying off personnel as a response to budget cuts. Some of the alternatives that have been talked about include more flexible opportunities for part-time work, work-sharing and incentives for early retirement. The MCAD certainly supports and encourages these kinds of alternative arrangements, if they do, in fact, result in retention of minority workers, although their formulation is not within our area of expertise and is better addressed by those in more directly related fields.

I would like to raise a word of caution concerning schemes for encouraging early retirement. We certainly have no difficulty with such arrangements when they accommodate the needs and desires of both the employer and the teacher or administrator. However, older workers (those between 40 and 65 under State law and between 40 and 70 under Federal law) have statutory protection based on their age. The line between voluntary early retirement and coerced retirement may be very thin. Any such offers to older workers must be carefully scrutinized to see that no rights are violated. Given the realities of budget cuts in Massachusetts, however, such measures probably have only limited effectiveness, at best. Layoffs appear to be inevitable. The major focus of your Committee must be examining ways to maintain an integrated work force in the context of layoffs.

There are a variety of legal issues involved in the interplay between straight seniority layoffs, discrimination and affirmative action which change according to a given, specific, fact situation. I understand that among the participants at today's consultation are persons actively involved in the ongoing litigation in this area and so I will touch only briefly on the range of issues presently being addressed in Massachusetts.

Probably the clearest situation where straight seniority is set aside involves those groups of employees whose hiring is controlled by Federal court orders. Boston teachers and administrators are, of course, the main example of this in public education. Layoffs of other public employees, most recently Boston police and fire personnel, have also been modified by Federal court orders. The plaintiffs in these cases, the minority employees, have successfully returned to Federal court to seek to modify the earlier court orders, which dealt only with hiring, so as to prevent adverse impact which would negate the purpose and accomplishments of earlier orders. In the Boston School Department case, Judge Garrity recently held that layoffs must take place so that the proportion of minority personnel prior to the layoffs is maintained.

Another situation which is currently being litigated involves layoffs where the layoff provisions of the collective bargaining agreement itself contain affirmative action as well as straight seniority language. In this case, the City of Worcester School Department, with the concurrence of the union, laid off employees according to straight seniority, disregarding the affirmative action layoff language of the contract. Plaintiff minority teachers successfully obtained an order in State court that the union take plaintiffs' grievance to arbitration and that plaintiffs had the right to participate in the selection of an arbitrator.

In yet another situation, the Cambridge School Department has laid off teachers using affirmative action considerations despite a collective bargaining agreement that calls for straight seniority. White teachers have filed a complaint in Federal court against this action and black teachers have moved to intervene. There apparently has been no hearing in this case as yet, which will call into issue the legal tensions between affirmative action and so-called reverse discrimination as well as contract issues.

In a final class of cases, minority teachers in Springfield who have received layoff notices pursuant to strict seniority clauses of collective bargaining agreements have filed complaints, several at the MCAD, alleging that the layoffs have an adverse impact on minorities. The legal theory of adverse impact holds that a facially neutral employment practice that has an adverse impact on a protected class is presumptively unlawful, unless shown to be job-related.

Last hired/first fired layoffs, whether done pursuant to a union contract, a civil service statute, or management discretion, will have an adverse impact. The question is: Are they justified as a business necessity, or exempt from the law? Under Title VII

of the Civil Rights Act of 1964, a bona fide seniority system is exempt from coverage by specific statutory provision. Chapter 151B, the State anti-discrimination statute, contains no similar exemption. Neither the MCAD nor the Supreme Judicial Court has ever decided an adverse impact/seniority case. While this remains an open question under State law, a review of Title VII cases prior to *International Brotherhood of Teamsters v. United States,* 431 U.S. 324 (1977), in which the Supreme Court held that Title VII immunizes bona fide seniority systems from attack is not encouraging. Courts have been reluctant to find a violation in these cases because of the difficulty of fashioning an appropriate remedy where there are identifiable, innocent, incumbent employees who will lose their jobs.

As the above review demonstrates, there is a range of legal issues being litigated in Massachusetts concerning the impact of layoffs on minority workers and on minority teachers in particular. What the review points to, and what our experience with working with municipal government as a whole indicates, is the increased importance, in these times of economic constraints, of effective and aggressive civil rights enforcement and affirmative action activities.

Those minority workers most likely to retain their jobs are those who are protected by consent decrees in Federal court cases first brought in the early 1970s. Other minority workers, and members of other classes, such as women, who were not the subject of major discrimination suits during that period of an expanding economy and increased hiring, do not have similar protection now that unforeseen layoffs are occurring.

School departments in general, with the exception of the Cambridge School Department, caught between the conflicting demands of seniority and affirmative action requirements, are choosing straight seniority layoffs.

Litigation clearly should be pursued whenever possible. However, litigating major employment discrimination cases is expensive and time-consuming and places a tremendous burden on individual plaintiffs and civil rights resources. Relief in any given case is limited to certain individuals so that issues must be relitigated and many persons remain unprotected. For these reasons, we urge an emphasis on strong affirmative action provisions for layoffs as well as for hiring.

Affirmative action proponents in the past have concentrated their efforts on bringing numbers of protected classes into the work force. During periods of expanding economy, this was both necessary and appropriate. Because the kind of systematic layoffs we are now seeing was not envisioned, little or no effort has gone into devising strong and effective affirmative action procedures for layoff and recall situations. Most affirmative action plans, even quite sophisticated ones, do not directly address the issue of layoffs. There is a general perception that affirmative action, while perhaps appropriate for new hiring, does not apply in these changed circumstances of layoffs.

The MCAD makes two major recommendations to this Committee. First, civil rights agencies and advocates should continue to press for strict enforcement of civil rights laws. It must be clear to employers, unions, and the general public that commitment to the enforcement of these laws will not falter in spite of economic contraction. This Committee should use its efforts to ensure that resources and commitment for civil rights enforcement are not cut back.

Second, the Committee should support a policy encouraging strong affirmative action provisions relating to layoffs. If necessary, such language must be included in collective bargaining agreements. Affirmative action programs should at least maintain the proportion of minority representation prior to layoffs and address recall and resumption of hiring procedures.

The MCAD's experience has shown us that probably the most effective method for leveraging affirmative action compliance is through conditioning the receipt of Federal and State funds on the performance of certain activities. The MCAD has been able to use the authority of the Federal Office of Management and Budget Circular A-95 and a similar State executive order to leverage individual communities, who are applicants for Federal and State funds, to initiate affirmative action programs in employment, housing and contract compliance.

In your advisory role to the United States Commission on Civil Rights, you should be aware of present efforts to undercut the present A-95 review system. HUD is moving to eliminate A-95 review requirements from its programs and in particular the Community Development Block Grant and Urban Development Action Grant Programs. Other Federal agencies may well follow suit. Despite its weak-

nesses, the A-95 scheme is an important means for effecting affirmative action activities by public employees. Its loss will severely hamper efforts to increase affirmative action programs and activities.

An effort is needed to expand effective affirmative action programs for school employment. It is imperative that agencies such as the Commission on Civil Rights take a strong leadership role in assuring that civil rights enforcement and affirmative action efforts continue and are strengthened during these difficult times. Aggressive activity is necessary if we are going to have any sort of equitable minority participation in public employment in Massachusetts in the 1980s.

4. Layoffs and Affirmative Action: The Legal Issues and Reasonable Approaches

J. Harold Flannery

Mr. Flannery is a partner in the Boston law firm of Foley, Hoag & Eliot. He represents the Cambridge School Committee in a law suit filed by the Cambridge Teachers Association charging that the school committee violated the collective bargaining agreement by deciding not to use seniority as the sole basis for determining layoffs under Proposition 2½. He was asked to address the legal issues involved in questions of layoffs and affirmative action and to suggest approaches to take in coping with this problem. The views he presents are solely his and not those of his law firm or clients.

I shall try in this brief paper to describe the problem correctly, to summarize the present law understandably, and to think aloud with you about some constructive ways to cope with it. To my mind, the issues illustrate some fundamental axioms about our law that are sometimes overlooked. To mention them now may seem simplistic or obscure, and I hope that their significance will be clearer as we work our way through the issues. But I do mention them here for more than just their intellectual interest; bearing them in mind will help us, I believe, to address the questions more soundly than we otherwise might.

First, the law is not, and should not be, a collection of *a priori* absolutisms. Words such as "always" and "never" have the virtue of predictability, and relying on them spares us the pain of hard thought and having to weigh our values more than once. However, such notions, and their false sense of security, are worse than useless; they can produce results that are unworkable and unfair. Consider, for example, that "race may never be considered" can perpetuate an illegally discriminatory status quo; conversely, "minority status always earns absolute preference" can be unfair to the beneficiary, his/her competitors, and the job itself.

Although I have no empathy with those who knowingly want to perpetuate previous discrimination, I also do not mean to sneer at all those who argue that race should never be considered. For most of our history, the only consideration of race has been to harm or exclude minorities, and for some fair-minded persons the only safe course will be to remove such consideration, benign or malignant, from our society, completely and at once. Conversely, some other fair-minded persons argue for an absolute minority preference because some whites have enjoyed it, and it will overcome a painful legacy quicker. I believe *that* proposition, despite its seeming logic, will be self-defeating in this predominantly nonminority society, and I believe it is socially inefficient.

During the 1960s, I observed Southern bureaucracies, including many educational ones, closely and on-site. Race was a basis, indeed a requirement, for preferment, and many incumbents—both absolutely and in comparison to parallel minority systems that I was observing—were nincompoops. And while I have not observed it myself, I have even heard it said that some of our ethnic bureaucracies closer to home are fallible.

In any event, the point of all of this is that the law does not and should not, for its own sake and ours, view affirmative consideration of minority status on an absolute—"never any" or "always so much"—basis.

My second axiom about the law is that it should be an instrument for solving problems by reconciling

contending interests. The advantages of the rule of law are that power yields to principle, and controversies can usually be resolved before conflicting interests confront each other in ways that harm third parties and often even themselves. We must adhere to the rule of law in order to gain those advantages. But if the law is used to vindicate extreme positions, rather than to accommodate competing legitimate interests, it will become our resented master rather than our helpful servant.

Finally, a particular resolution or decision may be entirely lawful, but if it is too widely perceived as infeasible or unfair, it will not survive. That is, I think President Eisenhower had it backwards when he used to say that you cannot legislate hearts and minds, and you must reach them first. In my view, the law *can* control behavior, and attitudes will follow. However, I also believe that a particular decision, no matter how lawful it may be, will not survive if it is seen by nonparties to the dispute, and particularly by those who are not disputants but who have a stake in the outcome, as unworkable or unfair.

My third axiom is that the law can sort out and define rights and duties, and it can prescribe remedies or resolutions. But resolutions are not self-executing, and the law itself does not implement them; people do. And the law's role in providing the mutual respect and cooperativeness that are necessary for the effective implementation of any resolution is distinctly subordinate.

Before turning to the present law of our subject, I shall state the problem so that we are all thinking and talking about the same things: When minority employees are disproportionately junior to nonminority employees, the minority employees will be more adversely affected by layoffs based upon the seemingly neutral principle of seniority—last hired, first fired. A recent monograph states the problem succinctly in the context of public education:

> . . .most schools have recently added—often after much effort and expense—minority group teachers who have little seniority. A RIF (reduction-in-force) policy based solely on seniority will mean discharging these recent hires.[1]

When the problem is turned around, the question becomes: Under what circumstances, if any, may or must minority faculty and staff be retained "out of order," i.e., ahead of more senior nonminorities? Several established legal principles start us toward an answer to that question, but I must emphasize that they do not take us far. Indeed, to state them will leave us at a crossroads more than it will point us in a clear direction.

First, a reduction-in-force or other faculty realignment may not be a subterfuge or vehicle for intentional discrimination. Southern school desegregation permitted many systems to reduce their overall faculties by going from racially dual systems to unitary ones, and in the Jackson, Mississippi, case, the court forbade systems to seize the opportunity to get rid of black teachers on account of race.[2] Other cases before *Singleton* had forbidden school systems to discriminate against minority teachers, provided you could catch them at it; but note that *Singleton* permits, indeed requires, consideration of race in the context of some other primary event, i.e., a layoff. And to the extent that it shifts the burden of justifying a racial effect on non-racial grounds to the system, it suggests a presumption that minority faculty will continue in the system, and it is thus something more than just the (then) latest pronouncement against discrimination. It says to the system, in effect, if you have a reason other than the

[1] Phay, *Reduction In Force: Legal Issues and Recommended Policy*, NOLPE (1980). This piece does not focus on affirmative action and layoffs, but it is an informative discussion and case collection of a number of (mostly) procedural issues.

[2] *Singleton v. Jackson Municipal Separate School District*, 419 F. 2d 1211 (5th Cir. 1970). To digress briefly, some of the Southern teacher cases presented painful policy questions. Many systems had hired for their black schools without the same attention to quality that they had reserved for their white schools; moreover, many black teachers, because they themselves had been relegated to segregated, inferior schools, were in truth less able than many of their white counterparts. One approach to that issue was to say, in effect, if the weaker teachers were good enough for black children yesterday, they are good enough for everyone's children today. Many black families saw that approach as retributive justice and demurred to it. Another approach was to evaluate all faculty by ostensibly neutral, objective standards, and then to discharge the lower achievers, i.e., the blacks. That approach was in some respects worse because it operated to perpetuate the effects of previous discrimination, and it retained older teachers who had earned marginal extra credits from marginal institutions for salary purposes ahead of new B.A.'s from Fisk, Dillard or "Ole Miss." And of course, the Educational Testing Service descended on the situation offering to test any competency for any purpose. Forgive a lawyer's bias when I say, bless the Southern Federal Judiciary, for many courts required systems to retain their minority teachers and pay them (part salary plus tuition) to upgrade their skills. That helped a lot. I shall close this digression and bring us back to our subject: I do not recall any system proposing to retain its teachers on the basis of seniority. I assume that the greater mobility of white teachers and hence their comparative "juniority" was coincidental.

race of those about to be disadvantaged, let us examine it for legitimacy.

Second, a number of cases establish that a public employer, legally obliged to take affirmative action in order to cure the effects of previous discrimination, may not nullify the gains by seniority-based layoffs.[3] That principle applies not only when a court has found previous discrimination, as in the Boston police, fire and school cases, but also where a plaintiff and a defendant have entered into a consent decree which denies previous discrimination but requires affirmative action. It is an open question whether seniority-based layoffs are forbidden to employers who have adopted affirmative action plans, without a finding of previous discrimination, pursuant to Federal or other contractual obligations. However, where the effects of previous discrimination must be remedied, all procedural impediments (such as collective bargaining agreements, traditional practices, and even State law) must yield, even if they themselves are neutral. I use the term "procedural" because I know of no remedies requiring the employment of persons who are unqualified by some legitimate standard.

Third, where a seniority-based layoff harms minority employees disproportionately because they are junior, the discriminatory effect is clear, so is the effect illegal? An employer that prefers seniority can argue that its scheme is constitutionally permissible because there is no intent to discriminate, and that Title VII of the Civil Rights Act of 1964 (the principal Federal job anti-discrimination law) explicitly permits good faith seniority systems that have a racially disparate impact. Whether such an effect is permissible under State law, which does not have a parallel seniority system authorization, is an open question.

Fourth, Title VII also permits an employment criterion that has a discriminatory effect if it is a bona fide occupational qualification. However, the statute also seems to say that the one criterion to which that exception cannot apply is race itself. That principle would seem to forbid race-based employment decisions however well-intentioned they might be. In *United Steel Workers v. Weber*, 443 U.S. 193 (1979), however, the Supreme Court said to white employees, who were alleging that a voluntary affirmative action program was omitting them illegally from apprenticeship opportunities, that voluntary remedies for previous underemployment of minorities are permissible, even where they have an adverse effect on non-minorities.

Before we return to the question of public school system layoffs, I want to emphasize that the affirmative action scheme approved in *Weber* was intended purely and simply to improve minorities' employment opportunities; it had no larger societal objective. In *Bakke*[4] it was argued by some that affirmative action would ultimately benefit minority communities as well as the minority medical students themselves, but no one suggested in *Weber* that aluminum users are affected whatsoever by the race of the person who heats their ingots.

Fifth, other Supreme Court cases, including *Bakke* itself (despite the invalidation of the particular program involved there), have very cautiously approved some voluntary affirmative consideration of minority status.[5]

A sixth legal principle with possible applicability to teacher layoffs appears in the Supreme Court's decision in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). In the course of saying there that Federal law does not require pupil desegregation unless the existing segregation is found to be illegal, the Court was careful to reaffirm that school authorities are traditionally empowered to desegregate voluntarily for educational reasons. Put differently, no one has a legal right to a segregated education however it may have come about, and school boards (and State legislatures, as in Massachusetts' Racial Imbalance Act) may consider race in order to bring children together for educational reasons. Note two aspects of that decision that may make it different from employee layoffs: first, race is used for inclusionary purposes, i.e., to bring children together. Second, students (and presumably teachers) would be reassigned on the basis of race, but no one would lose an existing right or benefit; indeed, all would gain new benefits.

[3] *Oliver v. Kalamazoo Board of Education*, 498 F. Supp 732 (W.D. Mich. 1980); *Brown v. Neeb*, 49 LW 2578 (6th Cir. 1981).

[4] *University of California v. Bakke*, 438 U.S. 265 (1978).

[5] *Fullilove v. Klutznick*, 48 LW 4979 (1980); and so have some lower Federal courts. *Talbert v. City of Richmond*, 49 LW 2720 (4th Cir. 1981). Viewed as a neutral principle, do those cases suggest that non-minority status may also be given affirmative effect under some circumstances? Perhaps, as a matter of logic or principle, but I do not know of any cases upholding affirmative action for non-minorities. That is not to say, however, that groups other than minorities have not been excluded or omitted from certain employment opportunities on some other invidious basis such as religion, ethnicity or sex.

Lastly, let us bear in mind that Title VII and possibly other anti-discrimination laws forbid an unjustified discriminatory effect (subject, however, to such justifications as bona fide seniority), whereas the Constitution forbids only deliberate or intentional discrimination. Arguably, therefore, a well-intentioned public employment criterion is constitutionally permissible even where it has an adverse racial effect or byproduct. Is a racial effect that is foreseeable and avoidable sufficiently intentional as to be unconstitutional? Or does the intent standard require an impermissible objective? The answer is not clear at this writing, but certainly to my mind, a claimant who can show an adverse racial effect and a neutral means to the same end has established unconstitutionality.

I suggest that the foregoing principles illuminate our questions without answering them.* I also believe, as I tried to make clear at the outset, that there is not one uniformly applicable answer. Rather, the answer in a given specific situation should come from a sensitive, conscientious weighing of the competing interests; particularly, in the context of public school teacher layoffs, the educational interests of the students. At the risk of being trite, I emphasize that public school systems are not maintained for the benefit of teachers and administrators, or judges and lawyers, or football fans or even—at least directly—the taxpayers at large; they should be maintained for the students in the most enlightened way that we can afford.

Therefore, assuming that a school system is not constrained by preexisting selection criteria, such as a court order which may not be nullified, or the RIF terms of a collective bargaining agreement, let us try to identify and weigh the competing interests to see how and whether they can be reconciled consistently with the legal principles discussed above.

First, do minority and nonminority teachers have a legitimate interest in being employed? Of course, but that tells us only that there is a problem, i.e., that there will be plaintiffs and defendants.

Second, do teachers have a legitimate interest in the continuity of their employment, including some deference to seniority? Any teacher, minority or non-minority, will say "yes" to that, and I would agree. Moreover, my intuition (as opposed to familiarity with empirical data or studies) tells me that students have some positive interest in faculty stability and continuity.

Third, should seniority be paramount? We have already seen in the *Weber* case that, even where the only competing interests are minority and nonminority jobs, seniority can be required to yield to affirmative action for minorities. Therefore, in the public school setting, where students' interests are also involved, it would seem that seniority is relative rather than paramount, unless it correlates highly with teaching proficiency or some other student need. Unless I am grossly misinformed, teacher effectiveness and years of experience correlate weakly. Moreover, no one would reduce the last chemistry teacher because she is junior to a host of us liberal arts types.

Nevertheless, putting aside *Weber* and extreme examples of programmatic needs, is it discriminatory to retain a junior teacher ahead of a senior teacher, on the basis of race, where both are qualified? Put differently, assuming equal professional qualifications, can there be a legitimate basis for retaining a junior minority teacher ahead of a senior non-minority one?

If you believe that school boards may give their students the best faculties obtainable, even when that requires some subordination of teachers' employment interests; and if you believe that students need a racially heterogeneous faculty, much as they need a broad curriculum and professional diversity; then you can argue, consistently with the present law, for a reduction-in-force that gives affirmative consideration to teachers' minority status. The inclusion of minorities may not be a disguise for excluding nonminorities in general or other subgroups in particular; nor would a rigid quota be advisable, particularly if it bears no relationship to a plausible standard, such as the pupil composition of the school system or its community.

In the final analysis, we live in a heterogeneous society. Children first encounter and enter our society through our schools, so to me it is sensible to structure that first public institution in ways that are at least somewhat representative of society. Nonminority children in particular will benefit attitudinally from the presence of minority adult role

* Some employers, public and private, have been able to avoid confrontations over the hard questions by negotiating compromises with their employees. Proportional reductions-in-force, in which seniority is a factor but the racial percentages remain constant before and after the reduction, have been implemented successfully.

models and authority figures. Cognitively, I do not suggest that there is a minority arithmetic different from non-minority arithmetic, but the life experiences of many minority adults are sufficiently different from those of non-minorities as to bring an added dimension to a number of subjects. Too many non-minority children have been ignorant too long of the American minority experience.

If that makes sense to you, then I believe that it should and will make sense to the law.

5. Layoffs in the Boston Public Schools: A Political Issue

Larry J. Johnson

Mr. Johnson is an attorney on the staff of the Center for Law and Education, a federally funded center providing technical assistance to local legal service offices on cases involving education issues. Since 1977, Mr. Johnson has served as counsel to the plaintiffs, black students, in the Boston school desegregation case.

I was asked to speak to the legal issues of layoffs and affirmative action as they affect the Boston school desegregation case. That assumes that there are new legal issues arising from the current round of layoffs being proposed by the Boston School Committee or by other school committees around the Commonwealth.

The issue before the Boston School Committee and the Federal Court today is the same issue that was facing it eight years ago when the case was initiated. It is also the same issue that was facing the court six years ago when it issued its faculty desegregation orders. At issue is whether or not the Federal Court is empowered to order a race-conscious remedy to correct a situation of discrimination against black teachers and administrators when such discrimination denied black children an equal education. In 1975, Judge Garrity ruled it was within the jurisdiction of the court to order a race-conscious remedy to correct the past employment discrimination of the Boston Public Schools. That decision was upheld by the First Circuit Court of Appeals and was not reviewed by the Supreme Court, therefore allowing it to stand.

So the issue before the school committee or the court today is the same one as before: that is, will it utilize a race-conscious process in the layoff of teachers to correct past discrimination which adversely affects the educational opportunity of black students within the Boston Public Schools?

It is interesting to note some prophetic language from the First Circuit Court of Appeals' opinion in 1976, which reads that, "while affirmative action to rectify past discrimination is more painful during a time of underemployment than full employment, it is no excuse for inadequate action." The real question is whether or not the Boston School Committee or other school committees addressing the remediation of past discrimination against people of color, women, or any other affected group, will use the excuse of Proposition 2½ for inadequate action. Fortunately, the Federal District Court has not allowed the Boston School Committee to rely on that excuse.

However, school committees in other jurisdictions do not have the weight of Federal District Court orders behind them in most instances. Thus, what confronts us now is not a legal, but a political issue. That is, whether the judicial system when confronted by the political force of organized teachers will capitulate in the obligation to provide equal educational opportunity to children of color. This is a political issue primarily because, from my perception, there are no less monies within the Commonwealth now than before Propostion 2½.

A political decision has been made as to where to allocate the monies within the Commonwealth, and that decision has been made not to allocate those monies toward the education of our children. It is that decision that ought to be addressed, in addition to how the money is to be spent that those in power disburse through the public sector.

Some people will suggest that there is a new legal issue presented by the present round of layoffs. That

"new issue" is whether the white staff presently employed by the school committee should have greater rights than whites "at large." To suggest that they should, is, to my way of thinking, illogical. Those white employees within the work force are the very ones who have benefited by discrimination against black employees. Therefore, they are, to my way of thinking, the more appropriate persons to bear the costs of having to remediate past discrimination against black employees. They got their jobs, they got their homes and whatever other material goods they have, on the backs of those blacks and other minorities who were not employed. Thus, for them to argue that their length of employment is cause for them not to be discharged, I think, would clearly frustrate the intent of the Thirteenth Amendment of the Constitution to remove the vestiges of past slavery. If those whites who have benefited from our enslavement are allowed to use the excuse that they do not want to give up their material status in order to rectify that wrong, then how can that wrong be rectified?

As an attorney for the Boston school department has stated on various occasions recently, we are talking about a "zero sum" game. The pie is not getting any larger. If you are going to correct past wrongs, it means a different allocation within the same pie. That is why I say that the fundamental issue before this Commission, before the Commonwealth and, ultimately, before the country, if not the world, is how we will allocate resources.

I believe, in the first instance, the business community has decided that it is no longer in its self-interest to allocate resources for public education. They no longer need American workers. They can find cheaper labor elsewhere. And, anyway, most of their children receive education in private schools.

Further evidence that this is a political problem is seen in the fact that last year, even prior to Proposition 2½, the State Board of Education was suing the Boston School Committee to prevent a possible closedown of the system for lack of funds. At the same time, the Massachusetts General Court was withholding about $30 million from the school committee that the committee was entitled to under the State's educational funding statute. Thus, we had the State not meeting its full obligation to fund the Boston Public Schools, while its agent, the State Board of Education, was suing the school district to remain open 180 days, in spite of insufficient funding.

That the teachers union's position is also political is evidenced by the fact that it is supporting seniority, which will cause more of its members to be laid off. The court-ordered alternative of "affirmative action," has the irony of retaining teachers at a lower salary rate; therefore, more teachers overall can be retained. For example, if you are retaining teachers who have an average salary of $15,000 as opposed to teachers who have an average salary of $25,000, you therefore can retain 40 percent more teachers.

Of course, in supporting seniority they are also supporting racism, which again is destructive of their own self-interest. Teachers are saying that without the thousand laid-off teachers in Boston, the quality of education that students are entitled to under State Board of Education policies will not be delivered. Yet those same teachers are adhering to strict seniority as the sole criterion in layoffs. This puts them in a position that the people I represent believe to be untenable.

From my perspective, assuming no change of heart by the taxpayers, there are four possible solutions to the current situation. The first could be that Boston Mayor Kevin White finds some more money within the city budget and all thousand teachers are rehired. I think that is very unlikely. If it did happen, the confrontation we are currently facing within the school department would only take place in another area of the public sector. It might be in the garbage collection, or in health and hospitals, but somewhere within the public sector someone would have to pay the costs were the city to decide that it was in the best interest to allocate an additional $20 million to the school system. Thus, this option does not really address the fundamental political issue of allocation between the private and public sector. It would address misallocations within the public sector, if taken from capital debt or construction, *not* salaries of other public employees.

The second possible solution is that the judicial system could capitulate to the political power of the unions and uphold strict seniority for white workers. The feelings of white workers that they ought not to have to lose anything at the expense of blacks will be reaffirmed. The effect on blacks will be further disillusionment. They will perceive that so-called solidarity among workers only goes so far. It follows the color line like everything else within our society.

The third possible solution is that black workers could "win," and the system again would be vindi-

cated, because black workers will feel that it has worked for them. It is ironic that should either of the two competing interests within the working class "win," the system also wins. Should blacks win, then the white anger and backlash that we were beginning to see in the Boston police and fire departments will be seen throughout the city and the country. White workers are not going to tolerate black workers employed at, what they believe to be, their expense. But white workers still will not identify our economic system as the culprit. They will identify their black colleagues as the culprits.

A fourth outcome that I do not hear anyone discussing, and the only one that has long-term viability, is that black and white teachers should voluntarily decide together to share the reduction. This should be done, if they truly believe that we require the 5,000 teachers to provide Boston's school children some semblance of a quality education. This proposal requires voluntary reductions in salaries from an average of $21-$22,000 to an average of $15–$16,000. We know how hard it is for people to give up anything, but that is the only solution capable of long-term non-violent resolution of this conflict. I do not see this solution as likely, probable, or even possible, given the current psychology of our society.

Therefore, what I think will result both here in Boston and around the country is that white workers will win a few, and black workers will win a few, but they both will lose ultimately.

As to Boston, I believe that the law is here to support a black teacher's victory. However, it is just a short-term victory. I represent black students in the school desegregation case and just secondarily black teachers. I know that if black teachers win, black students will lose, because angry white teachers will not teach black students. And they, the teachers, are in control of our children's education.

That is why I am concerned about my clients and the likelihood that there will be no victories from this struggle. There are 10 educational goals for public school established by the Commonwealth of Massachusetts: physical and emotional well being; basic communication skills; effective use of knowledge; capacity and desire for life-long learning; citizenship in a democratic society; respect for the community of man; occupational competence; understanding of the environment; individual values and attitudes; and creating interests and talents.

No one in this room or in the city of Boston can honestly represent to me as counsel for the black students, who make up 46 percent of the student population of the Boston Public Schools, that they will achieve these 10 educational objectives within the Boston Public School system this year.

6. Affirmative Action in Public Schools During Times of Psychological and Fiscal Recession

Dr. George S. Smith

Dr. Smith is the Equal Opportunity/Affirmative Action Officer for the Worcester Public Schools. *This paper addresses the need for affirmative action in public education employment and suggests some steps which can be taken to ensure minority representation in public school work forces.*

After a decade of effort by thousands of people to alleviate the impact of discrimination on children, the results are mixed. The case for equality and fairness in education and educational employment has become complex with no simple solutions or guidelines from the courts.

One inescapable conclusion is that reform of current employment practices governing the selecting, hiring and promoting of minorities, women and handicapped employees must continue. Reductions in resources in hiring must not be allowed to impede the positive growth of equal employment opportunity that has been realized through affirmative action programs.

The economic conditions facing public schools in Massachusetts have serious ramifications for equal employment opportunity and affirmative action programming. The legal responsibilities of the school system to adopt equal employment opportunity and affirmative action (EO/AA) programming have been established. But the seeming resurgence of conservative attitudes and the passage of Proposition 2½ will require commitment to the concept of equal opportunity.

In November 1980, the voters of Massachusetts approved referendum 2, commonly known as Proposition 2½. This referendum was a tax limitation reform act, the passage of which amended a number of Massachusetts statutes. Under Proposition 2½, local tax on real and personal property may not exceed 2.5 percent of the full and fair cash value of such property. Cities and towns will have from five to eight years to reach this tax limit by reducing expenditures 15 percent each year. The fiscal autonomy of school committees has been deeply affected by this statewide referendum, and public schools in Massachusetts can be devastated by the effects of Proposition 2½.

Consistent with the trend throughout the country, student enrollment in public schools in the Northeast has been declining, bringing to an end an era when educational institutions and their staffs grew tremendously in response to increasing numbers of children, affluence, and the perceptions of the schools as society's problem solvers. Accompanying that decline has been the financial pressure of spiraling inflation during the last five years. Proposition 2½ in Massachusetts makes educational employment matters even worse.

Retrenchment is the unavoidable result. There will be many impacts of this retrenchment on people served by the public schools, but none will be as serious as the impact on minorities and women. A U.S. Department of Education analysis points out "that financial stringency and decline have reduced the total demand for teachers and sharply decreased the upward trend of their employment of past years,

resulting in many instances in layoffs of educational personnel."[1] Traditionally, those people with the least seniority are the first to be laid off in public schools. Nevertheless, the legal responsibilities to those people who have been recently hired as a result of equal opportunity and affirmative action programs continue to exist for public school systems receiving Federal funding.

If the policy of using seniority and tenure to decide which school employees will be maintained is continued, those hired under comparatively recent affirmative action programs will be laid off. Educators should explore and give serious consideration to new policies that will not reverse the positive effects for minorities that have resulted from affirmative action programs. More successful remedies to eliminate the inequity that disproportionately affects women and minorities must be found; to do less would be to abandon a significant portion of the population and repudiate a long struggle for equity and equal opportunity.[2]

An effective EO/AA officer or personnel manager in an urban school district should recognize the need, at the time of staff reduction, to explore policy alternatives to seniority and tenure to prevent the elimination of affirmative action efforts. The EO/AA officer or personnel manager should realize that during a period which is both psychologically and economically recessionary, he or she should provide leadership and direction for the public school district by providing: (1) the educational justification for affirmative action, and (2) policy alternatives for affirmative action.

Educational Justification for Affirmative Action

Urban schools which have obligations for the development and implementation of affirmative action programs cannot obliterate the effects of years of discrimination; however, they can bring the proportions of affected groups into balance with other employees.

Moreover, the implementation and maintenance of an effective affirmative action program can enhance the quality of education offered to all students, particularly minority students. Black and Hispanic students can benefit by affirmative action programming because black and Hispanic staff become a part of the educational process. Minority staff members can also give special assistance to black and Hispanic students in the learning process by drawing from their own educational experiences. Minority staff in a school district can improve the educational experiences of majority and minority students by reviewing instructional materials and removing racially stereotypic portrayals or detrimental characterizations.

Urban school districts attempting to enhance the quality of education offered to minority students should consider affirmative action programming. Through the implementation and maintenance of a viable affirmative action program, an integrated work force can be constructed. As Gentry, Jones and others suggested in *Urban Education: The Hope Factor,* an integrated work force enhances an educational environment because it offers positive role models for the socialization process of all students, particularly minority students.[3] Furthermore, students acquire the temperament—beliefs, feelings and expectations—appropriate to positive roles. With a school district employing minority teachers, positive role learning for black and Hispanic students can exist.

An affirmative action program in an urban school system should call for the employment of blacks, Hispanics, women and handicapped persons (hereafter called "protected class members") at all levels of the table of organization. By implementing affirmative action programming and integrating its work force, an urban school district can build better communications and stronger ties between the school and community.

Protected class members bring actual sensitivities and experiences to an urban school district, enabling them to understand the values and life experiences of minority children. This understanding improves the learning process in developing parental understanding of the value of education and it increases their sense of responsibility for achieving this expectation. When school personnel perpetuate a monocultural pattern that is limiting and reflects society's practice of oppression, they scarcely teach students to their

[1] Education Finance Center, Equal Rights for Women in Education, and Education Commission of the States, *Retrenchment in Education: The Outlook for Women and Minorities* (Denver, Colorado: Education Commission of the States, 1977), p. 3.

[2] Ibid., p. 33.

[3] Antron A. Gentry, Byrd L. Jones, Carolyn Peck, Royce M. Phillips and Robert H. Woodbury, *Urban Education: The Hope Factor* (Philadelphia, Pa.: W. B. Saunders Company, 1972).

full potential. Protected class members serve as role models in raising the level of goals, aspirations and career objectives for all students, particularly minorities who suffer from oppression.

In urban schools, student learning has been complicated by such factors as improper and/or insufficient diet, excessive television viewing and lack of motivation. Many students come from homes where standard English is not spoken, where reading materials are minimal or non-existent, and where participation in school affairs is low. Teachers must work especially hard to overcome such difficulties. Teachers hired through affirmative action programs can contribute a perspective about dealing with these problems that is not easily learned in college classrooms.

With meaningful interaction among protected class members, students and parents, better communication and stronger ties between the school department, homes and community agencies can be built. Protected class members can make numerous contributions in developing the educational climate so that it is conducive to learning for inner-city students.

Policy Alternatives for Affirmative Action

During a time of stringent economic constraints, it becomes increasingly important for public schools in search of ways of maintaining and strengthening their EO/AA commitment to consider the following recommendations:

a. Review policy alternatives such as early retirement programs, work-sharing programs, and leave of absence programs for existing staff. These program options may provide opportunities to offset the negative impact of retrenchment.

b. Review all entry level and promotional criteria for all job classifications to determine their job-relatedness, their validity and their predictability of successful performance of employees on the job. (In other words, review the educational effectiveness of experience and educational requirements.)

c. Modify collective bargaining agreements to include an equal opportunity clause, a layoff procedure which considers factors other than seniority and tenure, and a promotional program which is equitable and job-related. Review any contractual provisions that could result in "adverse impact" for minorities, women and handicapped persons. Recognize the legal liability of school committees and professional associations for contractual agreements which are discriminatory or result in "adverse impact."

d. Review applications, tests and selection procedures for their adherence to EO/AA requirements. Where there are few job vacancies, it is in the best interest of public school administrators to do so.

Much that needs to be be done cannot be legislated. The American public must be educated to the legal, educational and economic rationale for equal employment opportunity.

Both public and private sector employers must be educated to the real benefits of an integrated society. When all members participate on an equitable basis, society can capitalize on a broader base of human resources and talents. With this philosophy, there may come a time, if schools successfully help in defining and implementing the solution to the problems, that an affirmative action officer may become unnecessary. Achieved goals will reflect the American belief that all individuals are equal and should have access to success.

7. Minority Educators and Proposition 2½

Shirley F.B. Carter

Ms. Carter, regional director of the Black Educators and Teachers Association (BETA), is a Staff Development Trainer for the Worcester Public Schools and has been active in the suit filed by black Worcester teachers against the Worcester Teachers Association.

Many teachers have been laid off in Massachusetts, and layoffs appear to be affecting minorities in a disproportionate manner. As a result of these layoffs, many issues confront black teachers and black teachers associations.

In Worcester there is a reduction-in-force (RIF) contract provision which is meant to protect minorities. Having a contract is not enough. Unless contractual agreements are enforced, minorities have *no* protection.

Even where school committees have taken action, such as Cambridge, and tried to retain some minorities, the union filed a suit charging the school committee with violation of the labor agreement. In Boston, where the Federal Court ordered protection of minority faculty, in a 10-year desegregation suit, the union challenged the order.

There are many reasons why there need to be strong Federal and State policies on retention of minorities in addition to local administrative policies. Among these are:

1. Maintenance of minority role models for a growing segment of the student population.
2. Correction of stereotypical thinking arising from distortion of the multicultural aspects of American society.
3. Making possible the positive student-teacher relationships sparked by informal counseling by minority educators.
4. Reducing the heavy financial and psychological burden layoffs impose on black educators.
5. Identifying and interrupting racism which results in declining support from school committees and negative judgments concerning urban programs.

Budget constraints are being used to justify the disproportionate impact of layoffs on black educators. When minority teachers are laid off, black children are again left without informal counseling or support. White children will relearn the stereotype: blacks are more expendable. Management in large urban school systems has failed to serve poor, black, Hispanic and special needs children along with the middle class.

Federal programs must continue to insist upon role models, hiring, training, promoting, and retaining minorities to reflect the populations being served. Yet, President Reagan plans to return responsibility and authority for such programs to the States. What will then happen to compliance with, and enforcement of, Federal regulations designed to encourage minority participation?

Solutions Are Needed

City government could encourage humane and effective use of the Nation's multiracial resources by making affirmative efforts to include minorities in all decisionmaking and policymaking bodies. Most municipalities, however, do not do so. On the contrary, many hide behind contract provisions, feigning

helplessness to cope with strict seniority policies, ignoring affirmative action language that exists in some collective bargaining agreements, and blinding themselves to reality. In education, the real issues include the changing ethnic population of the inner-city schools. White suburban growth has made a mockery of some of the formulas developed to address the massive racial isolation of our biggest cities.[1] Management energy and effort are geared to preserve the status quo[2] and to cater to a dwindling white student body in urban centers.

The concerns of the Black Educators and Teachers Association (BETA) may appear to focus on jobs, but its real focus is on poor and minority students with little hope. Percentages, formulas and time lines are distractions from the practical, commonsense, day-to-day classroom issues such as:

- Who will be there to talk to Timmy about his family-religious conflict with after-school band participation?
- Why have one or two black teachers been expected to counsel all the black students in the school, run the Martin Luther King Program and set up the staff development "sensitivity" programs on black history and culture?
- Should children expect to see and hear Spanish teachers only in bilingual programs? When Federal money goes, will the bilingual teachers go too?
- Will parents be expected to volunteer services in schools where aides and auxiliary helpers have been laid off?
- What role is Federal and State government going to play in these recessionary times to protect minorities?

Underlying Issues

Meeting increasing school budget costs with property taxes has inspired voters to revolt, using the polls to voice rebellion. Some change or relief had to occur. We now have a State-mandated reduction in property tax for localities.

School systems, in what appears to be a bureaucratic maze of indifference and inefficiency, have lost the confidence of parents and taxpayers. Why else would parents stand silent while school committees and legislators implement budget cuts that fall disproportionately on education and lay off hundreds of young, qualified, tenured teachers, including the newly hired minorities. Some of them teach in federally funded programs which have filled local education coffers since the late 1960s.

State and Federal Policies Are Needed

The critical issues are older than Proposition 2½ and deeper than protecting jobs currently held by BETA members. Unfortunately, school management only began to address underrepresentation of minorities in the 1960s and 1970s through the prodding of Federal and State government and under threat of court suits.

If there is any time when governmental protection for minorities is needed, it is in a time of recession. Civil rights policies must be made explicit. They must be enforced and retention must be written into State and Federal plans.

There are great social advantages when rich and varied cultures learn to live and work together with dignity and respect. Instead of looking forward and creatively searching for methods of coping with our changing cities, Massachusetts school committees and administrations are looking back to 1780 when the slaves were freed in Massachusetts. At that time, school committees assigned students to districts by race. In the early 1800s, the Boston School Committee observed:

> The Public Schools of Boston are now liberally and happily organized with separate schools for the two principal races of children. . . .offering equal opportunity of learning to both without subjecting either to objectionable, distasteful association.[3]

For years, this situation was allowed to persist in Massachusetts.

Massachusetts teacher training institutions and the new certification regulations acknowledge demographic changes in inner cities and require teachers to be well prepared to teach minority, non-English-speaking and special needs children. Teachers will also be evaluated on criteria structured around this training. Without Federal and State monies for special programs, and well prepared, integrated staff, how will this growing population be served? In schools or in detention centers, State custodial

[1] John Caughey, "Stunted Desegregation in Los Angeles," *Integrateducation* issues 97-98, vol. XVII, nos. 1-2 (January 1979), pp. 37-39.

[2] Christine R Dunphy, "Worcester: A Special Report," *Equal Education in Massachusetts: A Chronicle,* vol. II, no. 5 (March 1981), pp. 4, 5.

[3] Catherine E. Walsh *Yearbook of Equal Education in Massachusetts 1979-1980* (Amherst, Mass.: Horace Mann Bond Center for Equal Education, University of Massachusetts, September 1980), p. 6.

institutions, or jails? Over a million children attend schools in Massachusetts, and of these, over 100,000 are minorities and 500,000 are female.[4]

Among school personnel, minorities must be represented and women should be in positions of power. Civil rights laws exist because these commonsense facts are apparent. Compliance in Massachusetts is hindered now for the same reasons that thwarted my grandfather when he worked as a janitor in the Worcester Public Schools. His difficulties ranged from denial of needed equipment, to humiliation, to demoralization and to an early death. Job losers suffer physical and psychological effects as well as material loss. A lifetime of discouragement and job loss robs them of the stamina needed to initiate legal battles.

Institutional racism in Massachusetts must be recognized and stopped! Civil rights laws must be upheld and compliance must be sought by any and all legal means necessary, not only because it is the law but because it is necessary for education.

Separate seniority lists and recall lists designed to restore and retain proportional minority and female administrative employment should be agreed upon by teachers, unions, and management. When cooperative effort cannot be secured, the civil rights laws and the judicial system must be utilized.

An example of judicial enforcement is the decision in August 1981 by Federal District Court Judge Andrew A. Caffrey in seeking a just remedy in the Boston Police and Fire Department layoffs. The city of Boston had begun to implement massive reductions-in-force for alleged reasons of fiscal austerity. The judge believed that:

> . . .if this court fails to modify the decree as requested by the plaintiffs' motion, then a grievous wrong would be produced by this Court's non-action, i.e., a refusal to amend the remedial order would allow the substantial eradication of all progress made by blacks and Hispanics in departments since 1970.[5]

Judge Caffrey therefore enjoined the city from reducing the percentages of black and Hispanic police officers and firefighters.

BETA Recommendations

In order to ensure that gains made by minority educators are maintained during reductions-in-force, Federal and State civil rights agencies should:

1. Examine their regulations and, if necessary, issue additional regulations requiring unions, school committees and administrators to use race-conscious seniority lists and recall procedures to retain proportional minority employment and to reach affirmative action goals.

Nobody is going to protect minorities without strong Federal and State backing. Worcester's school committee, for example, risked suits by laying off minority educators because they represented only a small portion of the work force, there was no agency threat to stop funds, it was aware that no opposition would come from the union and it could gamble in a social climate which appears to support President Reagan's policy of cutting back funds.

2. Require school systems receiving Federal and State money to adopt policies that preserve or advance minority representation and affirmative action gains and ensure that those gains will not be lost by reductions-in-force.

Additional funding can be an incentive to encourage compliance. Civil rights laws and affirmative action policies lose momentum in a recession.

3. Maintain special programs for minorities, second language, special needs persons and women.

Retention is as vital as recruitment. Judge Garrity's order supported the city's desegregation plan by requiring minority percentages in the workforce. He stated that "this obligation exists whether the teaching force is expanding or contracting and. . .contractual agreements are expressly subject to this and other court-ordered obligations."

4. Promote the use of race-conscious systems in hiring as well as layoffs.

Official policies saying it is appropriate need backing and support. Relying on court findings is costly and time-consuming.

5. Assume the burden of enforcement of civil rights laws and policies in concert with local administrations.

The burden to enforce the law should not be placed solely upon laid-off minority educators. It is expensive and physically and psychologically draining. The State has access to the facts, and to methods that individuals and localities may not have. Victims of injustice are not as effective as State and Federal agencies using their authority.

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[4] Ibid., p. 4.

[5] *Castro v. Beecher*, no. 70-1220, 74-2982, *NAACP v. Beecher*, no. 72-3060, *United States v. City of Boston*, no. 73-269, slip op. at 8 (D. Mass. Aug. 7, 1981).

6. Affirmatively encourage teacher unions and school management to include explicit clauses in collective bargaining agreements to preserve and/or advance minority representation in reduction-in-force situations.

Work forces must be more fluid and flexible. The economy is not static; therefore jobs will continue to phase in and out.

7. Monitor affirmative action plans and minority teacher representation in RIF situations.

Civil rights agencies can not let recession undo the progress of affirmative action.

8. Enforce civil rights requirements for retention of minority educators in RIF situations.

Policies are needed to protect minority teachers when decreased work forces result for any reason, whether it be declining enrollment, Proposition 2½, or recession. Furthermore, desegregation plans for students are weakened when staff integration is eroded.

The March 1981 issue of the BETA *Newsletter* contained the following recommendations from the Coalition for Quality Education (CQE), a group of black educators and community leaders trying to reduce the burden of Proposition 2½ on minorities:

1. Union contracts: review the system's affirmative action plans; write local president for clarification of the union's position on enforcing affirmative action provisions; increase minority activity in the local union; become active in the Massachusetts Teachers Association "SOS Crisis Programs."
2. Court strategies: review relevant court cases; hire a lawyer; check desegregation orders and provisions.
3. Legislative strategies: register to vote; encourage non-educators to write regarding alternative tax approaches; contact legislators, especially black legislators.
4. Local minority staff organization: provide information to teachers about organization efforts; coalesce with other minorities; stress quality education, not jobs; document your membership.
5. Regulatory strategies: apply Department of Education Chapter 636 funds to retention of minority staff; get on Massachusetts Commission Against Discrimination Advisory Committee; check Title VI to see how school systems receiving Federal funds must prevent discrimination.
6. Other approaches: retirement incentives; job-splitting; obtain grant monies to maintain projects.

Among the suggestions for "reducing the burden" offered by the Coalition for Quality Education and also noted in the 1977 U.S. Commission on Civil Rights report *"Last Hired, First Fired"* is job-splitting or work-sharing. BETA does not recommend this approach and has offered workshops to help black educators retrain for other professional, full-time jobs. Job-sharing can only be supported as an option for those who can afford to share a job. As someone who is black, female and head of a household, I can assure you, many black educators can not afford to share a job. The way junior teachers' salaries are currently scaled, two paychecks are often needed just to maintain one household. Job-sharing should be an option to be used when it fits individual needs, but the focus of civil rights efforts should not be on job-splitting. Widespread adoption of such practices could backfire on minorities by giving school committees a way to exploit two teachers for the price of one. BETA therefore has focused on training teachers to qualify for lucrative jobs in other fields. Recognizing people as individuals with individual needs obligates us to look at all possible options.

8. The Cambridge School Committee and the Problem of Layoffs

Henrietta Attles

Ms. Attles is the first black woman to win citywide election to the Cambridge School Committee. She is a civil rights specialist with the Massachusetts Department of Education and is a doctoral candidate at the Harvard School of Education. Ms. Attles was requested to explain the Cambridge School Committee's efforts to accommodate affirmative action considerations as it was coping with the problem of layoffs.

A serious commitment to affirmative action by the Cambridge School Committee began with the demands of black high school students supported by concerned black parents. Black Student Demand No. 1, recorded in the April 21, 1970, school committee minutes stated:

> We demand 20 percent black faculty (people on all levels, i.e., teachers, administrators, and counselors); at least half of these faculty personnel must be hired by September 19, 1970 and at least half (another 10 percent or more) by 1971. We want a Black Community Board established to help hire these people.

Subsequently, Superintendent Edward Conley recommended that a goal of 20 percent black faculty be set by the school committee to be achieved as soon as possible and that an advisory committee for the purpose of setting guidelines for their recruitment and hiring be established. In 1970, at least 10 black teachers were hired as a result of active recruitment efforts.

The current affirmative action policy of the Cambridge school system was adopted in 1976. The policy developed the concept of affirmative action within a public school system and describes most of the necessary tasks for implementation. It fails, however, to be specific in terms of accountability and lacks a timetable for implementation. It also lacks compliance mechanisms.

There are several aspects of the affirmative action policy which to this date have never been implemented. For example, the policy requires that records be kept of all minority applicants and of minority employees eligible for promotion:

> When qualified, affected persons are passed over for promotion or are not employed, supervisory personnel should submit written justification of this decision.

> Applications should be kept open so that if, in the future, new positions should become available, they can be reviewed and notified.

Affirmative action and school desegregation go hand in hand. If we are really serious about preparing all children to survive and succeed in this society, there are several things we must do. We must first provide every child with a sound academic education. We must do this in a context that allows each child to develop a positive self-concept and respect for others who are different. Desegregation is necessary to provide students contact with those who are different.

Another vital element is the presence of role models for all children representing various racial and ethnic backgrounds.

At the time of the final phase of the voluntary school desegregation plan, it had become obvious that Proposition 2½ might require layoffs of personnel. Therefore, the following provision was included in the plan:

> All staffing categories (including, but not limited to teachers, administrators, secretaries, etc.) within the Cam-

Table 2
Cambridge, Massachusetts, Channel Systems for School Department Layoffs

		Current Percentage of Minorities in Channel	Number of Minorities	Number of Persons in Positions
01	K-3	11.36	10	88
02	Grade 4-8	10.08	13	129
03	Webster Cap School	20.00	3	15
04	King/Tobin/Open Magnet	38.46	5	15
05	Follow Through	18.18	3	15
06	Home Economics	0	0	1
07	Industrial Arts	28.57	2	7
08	Physical Education	18.8	4	22
09	Art	6.25	1	16
10	Music	6.25	1	16
11	Specific Education Different Proj. No. and Different Cert. Required	8.57	9	105
12	Occupational Ed. (Shop)	7.1	1	14
13	Coop Op. Int.		0	4
15	Dramatic Arts		0	1
16	Library Teachers	22.22	2	9
17	Reading (H.S.)		0	5
18	Student Services & Guidance	10.53	2	19
19	Pilot	42.86	3	7
20	Health & Safety		0	4
21	Lang. Arts-English	.04	1	25
22	Math	9.5	2	21
23	Science	6.9	2	29
24	Social Sciences	16.67	3	18
25	Modern Foreign Language		0	15
26	Business Education	26	2	10
27	Bilingual Education	23.08	9	39

Source: Henrietta Attles, Member, Cambridge School Committee

bridge public schools shall be hired so as to reflect the racial composition of the general population of Cambridge.

Since this goal has not yet been achieved, nor has the goals, set in 1970, of a 20 percent black faculty, this policy must become a priority consideration in all personnel decisions. Accordingly, even in the face of fiscal constraints, no school, department or program can have fewer qualified minority staff in each category than they have at present, as a result of layoff, unless that school, department or program can meet these standards.

When layoffs became imminent, the Cambridge Teachers Association demanded that the layoffs follow strict seniority. This would have meant that the minority representation in the work force of 11 percent would have been drastically reduced.

However, the school committee and the superintendent of schools developed a layoff strategy that they felt to be consistent with the terms of the union contract. The policy adopted provided that:

No tenured teacher shall be laid off as a result of reduction-in-force if that tenured teacher is qualified for a position occupied by a teacher with less seniority in the Cambridge school system.

The key to the conflict which developed between the teachers association and the school committee, as a result of the adoption of that policy, is the definition of "qualified." The union takes the position that certification equals qualification. The school committee takes the position that being qualified goes beyond being certified. According to the school committee:

"Qualified". . .means able to meet a minimum set of standards which in the judgment of the school committee is required before a person can teach a given course or a group can teach the courses in a given subject area or program.

Experimental and affective characteristics may, and in fact do, arise out of social and ethnic *experience* (as contrasted with classroom learning) particularly including the experience of being a minority in a dominant culture. All students need to see and hear a number of role models with which they can identify if they are to develop their full potential.

In order to implement layoffs based on retaining the most *"senior qualified"* persons for each position, school department personnel were listed in various channels. Under strict seniority, the minority staff would have been reduced to approximately 3 percent. Using the channel system, minority staff will constitute 14 percent after layoffs. Every permanent minority teacher in channels 1 and 2 has been maintained for the 1981–82 school year.

The channels utilized by the Cambridge School Committee are detailed in table 2.

The Cambridge School Committee maintains that the question of qualifications goes beyond affirmative action to the question of the power of a school system to define qualifications; this authority extends, under the school committee's interpretation of its power under State law, to the setting of qualifications for layoff.

The minority teachers and staff have intervened in the Cambridge Teachers Association (CTA) suit against the school committee, contending that even the channel system does not go far enough in remedying past discriminatory practices.

An interracial parent group has also intervened in the CTA suit charging that their children are being cheated of the kind of role models necessary for a multicultural/multiethnic education.

Since the Cambridge School Committee is pioneering in this approach, there is no legal precedent. The issue before the court being raised by the CTA is, "Is this a violation of contract?" We believe that it is not and are confident that the court will agree.

9. Our Public Schools Need Minority Teachers

Gwendolyn M. Blackburn

Ms. Blackburn is President of the New England Association of Black Educators and Chairperson of the Coalition for Quality Education. In addition, she is the supervisor of multicultural education for the Medford Public Schools.

On March 23, 1981, I appeared before the State Board of Education in support of the Cambridge School Committee's plan for the retention of minority educators. On that occasion I stated my belief that black teachers in the school make education more relevant for both black and white students. The existence of black teachers provides vital life experiences without which both *majority* and minority children are culturally disadvantaged. Contact and continuous interaction with black teachers aid in producing human beings who are more able to cooperatively confront and mutually resolve crucial social issues. In simpler terms, integrated staff and integrated education begin to prepare our children for a multiracial community, nation, and world. I concluded my remarks before the board of education pleading that the board not allow the hands of time to be turned back.

Prior to the past decade, there was intentional discrimination in the hiring practices in school systems. Unions have not been representing their dues-paying minorities, who through no fault of their own came into the system last. An affirmative action clause should have been included in labor agreements between teachers and school systems at the bargaining table. This oversight, if upheld, will deal an unfair, devastating blow to majority students, who are left to question the capabilities of black adults; to minority students, who are left without role models; and to an atmosphere ripe for myth-ridden, stereotypical education. We cannot in all good conscience cripple our children this way!

The Coalition for Quality Education's beliefs are consistent with those stated above. Although collective bargaining has never addressed the issue of the lack of minorities or the delay in hiring them—except for a few school systems—the burden of layoffs should be dealt with in an equitable fashion.

School systems *need* minority educators. White youngsters *need* minority educators and minority youngsters *need* role models.

Public education is being devastated by Proposition 2½ in Massachusetts, and by cuts in Federal education funds nationally. Poor youngsters, minority youngsters, and low- and middle-income youngsters are the ones who attend and depend on public schools.

Do I want to see white educators lose their jobs? Of course not—I do not want to see anyone lose his or her job. Do I want to see black and white educators pitted against one another? Of course not, but by the same token, I do not like knowing that many systems in the Commonwealth are currently charged with *prima facie denial.* Why are so many minority students in Special Education? Why don't they get out of Special Education once being placed there? Is it a problem of not relating? These questions and many others all have a very basic answer: Keep minority educators on the job.

The Coalition understands that in Springfield, all tenured teachers will be recalled this year; in Brockton, all the minority teachers have been called back for this school year; and in Worcester, Judge Hallisey ruled in July that the Educational Association of Worcester acted "arbitrarily and discriminatorily" toward minority tenured teachers who were laid off. He further stated that "the union totally ignored the affirmative action aspect of the reduction-in-force (RIF) clause." This decision was the first ray of hope that someone out there still cared about truth, fairness and justice.

Cambridge teachers and parents are also currently in court on a suit claiming the school committee is refusing to implement its affirmative action goal of employing 20 percent minority teachers, which was established in 1970. They further allege discriminatory practices by the Cambridge Teachers Association for unfair representation of its minority members. In Medford, my school system, originally it appeared that only 3 or 4 of the 16 minorities would be retained, but by using department seniority rather than systemwide seniority as the layoff criterion only 2 tenured and 3 non-tenured minority teachers were laid off.

According to the October 1980 State Department of Education Student Census, 49 percent of the students in Springfield were minorities; 34 percent in Cambridge; 13 percent in Brockton; 15 percent in Worcester; and 4 percent in Medford. In Boston, 64 percent of the student body was minority. Should we not have at least proportionate numbers of minority educators in these school systems?

Minority teachers should not have to go to court. It is costly and degrading to have to fight for representation by their collective bargaining representative.

The Coalition for Quality Education is well aware that the present conservative mood of the country has dealt a deadly blow to most programs and funds that would directly assist minorities and the poor. We are cognizant of the fact that gains made during the civil rights movement are being reduced to a 1960s apparition.

It is because of this that we black educators joined forces statewide to support at least one specific goal for the immediate future—to push for affirmative action language in every union contract to be negotiated. As dues-paying members of teachers associations who were historically subjected to discrimination in hiring practices, we believe that union leadership is obliged to address this issue with meaningful affirmative action language. For example, the following language has been suggested for inclusion in the agreement between the teachers and the school committee in Medford:

> In implementing the provisions of this article regarding reduction-in-force, the school committee shall reserve the right to retain a minority member of the bargaining unit who has been placed on tenure prior to June 30, regardless of seniority, as part of its affirmative action program.

We minority educators need whatever help the U.S. Commission on Civil Rights can offer. We minority educators once again feel oppressed even though, in many cases, a reprieve has been given for this school year. We minority educators fear for the safety of quality education for all youngsters. However, we minority educators will not be trodden down. We will not, cannot, rest, for there is yet more to come and we must now work toward prevention. We will stand shoulder to shoulder across this Commonwealth, across New England, and across the Nation and we will fight for the right to retain our rightful places in the schoolhouses of this land.

10. Possibilities for Retaining Minority Staff in Positions Not Covered by Collective Bargaining

James H. Case

Dr. Case is the Acting Associate Commissioner of the Division of Curriculum and Instruction for the Massachusetts Department of Education. He previously directed the Institute for Learning and Teaching at the University of Massachusetts.

How does a school system maintain some representation of minority staff in the face of reductions in staff, assuming that the contract with the teachers is based purely on seniority (as is the case with most contracts) and assuming that the layoffs are a necessity?

This is the question I was asked to address, and not the question of whether layoffs should or should not occur, or whether there are legal rights to be pursued which could protect some jobs for minorities. I will deal with the actual situation of what to do to retain minority representation when staff must be reduced.

The first point to be made is that there is very little knowledge available to anyone attempting to answer the question. There are three reasons for the paucity of information on this subject. First, many school systems in Massachusetts have no minority staff members or very few minority staff members. Second, in a majority of Massachusetts school systems, natural attrition has taken care of the reduction-in-force up until this year. Finally, neither the State Department of Education nor any other organization collects data on the race of the teachers who are laid off. The basic answer to the question "What can a school system do to maintain some minority staff representation?" is little, very little. The contract with the teachers association or union is a powerful contract. It invariably has seniority as a sole or major criterion in reduction-in-force, and it covers most of the professional positions in the school system. Thus, school administrators and the school committee members are left with very little leeway in which to move.

As most people are no doubt aware, personnel costs in a school system constitute up to 90 percent of the budget. The amount of money that a school administration has for consultants or for roles not covered in the teachers' contract is very limited. Nonetheless, there are some things that a school system can do to retain some minority staff in a layoff situation.

First of all, the school administration should not assume that the union or teachers association is unwilling to negotiate over these issues. There is a tendency to look on reductions-in-force as a totally adversarial situation between the union and the school committee. It may turn out to be so in some cities. It is very difficult for a union or association to do this, but it may turn out that peaceful negotiation can occur between the union and school system about positions for minority staff. Second, a school system can reserve some or all of the few non-contractual, locally funded positions that it has in this system for minorities. Such positions would range from community relations coordinator to assistant to the superintendent, or from aides of various kinds to grants manager. The larger the school system, the more such positions will be available. Unfortunately, the larger the school system the greater the likelihood that those positions,

too, would be covered by a separate collective bargaining agreement.

Nonetheless there do remain positions in a school system that the school committee and school administration have some discretion in filling, and they should utilize that flexibility to retain minority representation. A similar situation exists regarding State or federally funded positions within the school systems. There are various projects in many school systems (such as ESEA projects), which are not covered by the teachers' contract. It might be possible to staff these programs with minority teachers who otherwise would be laid off. In Boston, Springfield, and a few other cities, there are State funded Chapter 636 projects. In Boston and some other cities, there are bilingual staff who work with parents in the community; that is, non-instructional, community liaison, bilingual staff. There are some possibilities here if the school system is looking for ways to use State and Federal money to create jobs for minority staff outside of jobs covered by the teachers' contract. In fact, in some of those projects there is pressure from the State or by the Federal government to do so.

Finally, school systems do contract out for some services. Many school systems, for example, will not hire a school psychologist on staff but contract for psychological services. They contract for testers, for statisticians, and most obviously, for substitutes. Those contractual services are not covered by collective bargaining, and thus can be filled at the discretion of the school committee. In some school systems, that can be a sizable number of positions. Note that in all those instances that are listed here, the school committee and the school administration must be more than willing, indeed, must be eager, to do something. However, that condition is one which apparently does not exist in a large number of systems in Massachusetts.

I conclude, therefore, that once layoffs have occurred, and once most of the minority staff has been included in those layoffs, there are only some very minor things that the school system can do to improve that situation. None of them begins to take the place of having regular minority instructional staff in a school, which brings this, full circle, back to the questions of strong affirmative action language in the contract and the possibility of legal enforcement of the rights of minority teachers.

11. Preparing Teachers for Career Change

Ilene Wolfman and Cheryl Kramer

Ms. Wolfman and Ms. Kramer are consultants who design programs on career growth and staff development for school systems and educational associations. Both were employed by the Framingham School Department for several years. This paper addresses the process of changing employment fields and describes Framingham's program to assist teachers in transition to other kinds of work.

The large number of teachers recently unemployed in Massachusetts is the result of declining enrollment, school closings and the passage of Proposition 2½. This paper will discuss the changing career needs of many educators, outline the career change process and briefly describe one town's program to deal with this issue.

Forced Career Change

The impact of Proposition 2½ is being felt throughout the State as school systems and other publicly supported agencies are being forced to lay off employees. Making decisions to cut back staff is probably one of the loneliest, most difficult choices any manager or administrator must face. To further complicate matters, every method for establishing those who will be terminated has its strengths and weaknesses. Due to the extreme difficulty of implementing a layoff system based primarily on evaluation, many school systems have opted for a procedure determined largely by one's length of service, or seniority. As a result, in many cases those to become unemployed have been the younger and/or minority staff members. Not only does this reverse the positive headway made by minorities into the workplace, but it also eliminates the unique enthusiasm and dedication brought to the teaching profession by those who are young and idealistic.

Voluntary Career Change

In addition to those educators who find themselves forced into a career change, many teachers find they are interested in voluntarily seeking work in other fields. Closing schools and restricted budgets have meant fewer opportunities for advancement. The chance to move from the classroom into administration has become practically nil in many systems. Even horizontal career moves have become more difficult to achieve as other cities and towns experience similar cutbacks. With fewer buildings to be staffed, there are fewer opportunities to move and mix with people in another environment. As a result, in any school system, the staff has grown more fixed and constant.

Teaching Discontent

For many, the lack of mobility and advancement creates frustration. It is interesting to note that classroom teachers have exactly the same degree of responsibility for a group of youngsters on their first day of teaching as they do the day they retire. Despite the diversity of each new group of children, the lack of increasing responsibility is a major source of career frustration. Ask most people, "Would you still like to be doing your first job?" and you'll get an enthusiastic "no." Teachers are expected to be different.

Several other factors contribute further to a lack of fulfillment for educators. Many entered the profession seeking job security. Even during the depression, teachers worked. The new realities have left many educators disillusioned.

Just as teaching is no longer the bastion of career security, home and family life are no longer the only focal points of adult life. Women are now recognizing the need and desire to work throughout their adult lives and find it is no longer practical to drop in and out of the employment market. The impact of inflation has encouraged married as well as single women to remain employed. Having little, if any, opportunity for diversity and advancement causes teaching to become an unattractive long-term career option for many women.

In addition to few opportunities for promotion or advancement, there is little but self-initiative to motivate performance. Incentive pay systems are usually shunned by organized workers and salaries are fixed to a dollar amount and subject to public scrutiny. Despite the gains which significantly raised educators' pay in the 1970s, salaries will not keep pace with inflation in the 1980s. Those who benefited from step or level increments plus cost of living raises will see their actual buying power erode as they reach their system's maximum salary.

Lack of mobility, advancement, security, diversity, and buying power will contribute to the unpopularity of the educational profession. Add to this list the lack of community support, increasing physical and verbal abuse by students, pervasive tenseness and uncertainty. An unappealing work situation results for many. Some seek new alternatives.

Job Search Process

Many difficult issues are faced by those who either choose to or must make a career change. Educators are blinded by limited awareness of other fields of work. After years spent "going to school" they continue to "go to school" as their source of employment. Capable of learning, those seeking a career change must invest time and energy in gaining knowledge about themselves and other areas of work just as they spent time preparing for positions in education. Several areas must be explored in depth.

To begin a career change, enhanced self-awareness needs to be developed through personal skill analyses. It is important to understand the complexity of skills which go into even the most routine tasks. For example, lesson planning is a constant responsibility for a teacher. In order to develop a set of plans, it is necessary to analyze long-, medium-, and short-range goals and objectives; priorities are determined; tasks are broken into small, ordered segments; materials are utilized and coordinated; individual needs are identified; time constraints are observed; evaluative measures are developed. Other fields of work require utilization of these skills to accomplish tasks other than lesson plans. Educators need to better analyze the jobs they do.

In addition to skills analysis, values need to be explored. Examining issues which surround concerns of security, money, freedom, independence, initiative, assertiveness, confidence, and respect are critical. Value systems change with time and an individual's needs in one decade may differ in another. It is beneficial to reflect on such questions as: Why did I choose this profession? How do I feel about my work today? Would I choose this profession if I were starting again? What would I like to change? In fact, though these questions must be answered by those who make a career change, many educators explore these issues and gain a renewed commitment to stay in the profession.

Career changers need to learn about work in other types of organizations. They need to be less provincial about their interests and should begin to read newspapers, journals, periodicals, and books to learn about developments in other fields. They should become aware of the vast array of industries and businesses which comprise our economy by talking with people, observing, and taking courses.

Armed with new knowledge about work, there is then the need to learn how to find a job. It is important to be able to ask for help from others. Having the confidence to tell people of your interest (or need) to find other work can be difficult. However, this is imperative for an effective search. If reports are accurate that 80 percent of jobs go unadvertised, it is essential to talk with people to know what is going on in their company or organization.

Finally, given an enhanced understanding of his or her skills and an increasing awareness of new job interests, an individual can then begin to prepare for interviews and write resumes.

Facing Facts

The job search process is challenging for anyone and particularly difficult for those seeking a new

career as opposed to just a new job. Several facts need to be recognized in order to achieve success.

First, finding a new job takes longer than one would imagine. Six to 18 months of hard work and commitment is a realistic period of time for a job search. It is necessary to know this in order to plan appropriately for the time one will be unemployed and without wages. It also helps minimize the depression which can result from placing unrealistic expectations and time pressures on one's self.

Secondly, those who are involuntarily unemployed will likely progress through various stages of depression ranging from disbelief to anger to eventual acceptance. Feeling resistant and resentful of imposed change also needs to be recognized as natural and understandable. With time, these feelings can be reconciled and the reality of the situation can be accepted. Some people choose to join formal support groups or form small teams of three to five people who can help one another over the hurdles of a job search.

Third, job-seekers should not be overly romantic about comparing their work environment in a school system with that in other organizations. It is unrealistic to think that interruptions, time pressures, excessive and tiresome meetings, noise and paperwork do not exist everywhere. They do! Knowing this can help maintain a perspective since career or job change is never a panacea.

Fourth, teachers as well as other career changers must begin to think of their careers in more than one-year segments. Consideration must be given to changes which will occur three and five years into the future. This is particularly acute in considering salary issues. If a cut in pay must be made, how soon into the future is one likely to regain his or her teaching salary? This can easily be done by projecting typical teaching salary increases versus business raises.

Fifth, business people and educators alike hold many misconceived beliefs about the other's field of work. Breaking down attitudinal barriers requires both groups to develop willingness to ask questions, accept new ideas and readjust previously held concepts. Fortunately, as individuals are successful in the job transition they will serve as models to other educators as well as to their new employers.

Sixth, each individual must feel a commitment to change careers in order to be successful. This is necessary because the process is difficult and it is too easy to give up without a dedicated commitment to change. Also, experienced interviewers will readily recognize ambivalence and will use this to screen out a job candidate. From the employer's point of view there are several risks (money, time, quality, reputation, efficiency) in hiring someone whose experience is not noticeably similar to the job in question. The interviewee's attitude will either add to or diminish the risk perceived by the employer. Interestingly, those people hoping to be recalled or on a leave of absence to explore an alternative career may exhibit a noncommital attitude which hinders their interview success.

Last, it is trite but true that "No one gives jobs away." Given the competition created by many similarly trained individuals seeking new jobs, each person will have to prove his or her worth to a prospective employer. This is a difficult and lonely process which ultimately requires a person to convince someone he or she can do the job.

The Framingham Retraining Committee Model

The Framingham Retraining Committee was formed in 1978 as a joint venture of the school administration and the teachers association to meet the career needs of a school department staff facing budgetary and personnel cut-backs. The ongoing programs address the needs of those people forced to make a career change as well as those voluntarily seeking new work alternatives.

The program's purpose is to address the realistic human concerns that arise from projected layoffs. To accomplish this, information and assistance is provided in an effort to better prepare individuals for making a change.

Since budget cutbacks and school closings affect all staff members, programs and materials are made available to all employees. An advisory board with representatives from the teaching as well as non-teaching groups meets monthly to share ideas and plan programs.

A variety of sources of information and supportive services are utilized to prepare staff for career changes and develop an understanding of the career growth process. This includes a newsletter which is published every four to six weeks and provides data on in-house programs and resources available within the community.

Another major component of the program is an extensive series of workshops dealing with topics such as Skills Assessment, Personal Job Needs

Assessment, Assertiveness Training, Creative Problem Solving, An Introduction to Computers, Resume Writing, Interviewing, Techniques of Researching a Company and Organizing a Job Search.

Also, representatives from business and industry are invited to talk about their work, their company and the industry in which it fits. Other programs have included panels of former educators, individual counseling, support groups, and tours of local companies.

The variety and extensiveness of the program offerings enables people to choose those segments which they think will be most suitable to their particular needs. Framingham's program has been one town's attempt to cope creatively with the difficult and sensitive task of reducing staff size. Its success has been based on the unanimous support of all groups involved and as such has served as a model to other communities.

In conclusion, it is fortunate that Massachusetts has a diversified work environment which is envied by many of its neighboring states. However, the professionally trained skills of educators do not readily match the employer needs of this business and industrial base. Finding jobs for the thousands of laid-off teachers is a problem with many long-term implications which will remain an enigma for years to come. Every effort which can help ease the change process should be seriously analyzed and implemented if feasible. This will require the creativity and cooperation of residents and workers throughout the Commonwealth.

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